

**DECISION**

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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**FILE:** B-208244

**DATE:** November 22, 1982

**MATTER OF:** Norfolk Dredging Co.

**DIGEST:**

Protest that procurement was improperly set aside for small business firms will not be considered where material issues are before court of competent jurisdiction and court intends to proceed with request for injunctive relief whether or not GAO issues an opinion.

Norfolk Dredging Company protests any award under invitation for bids No. N62470-82-B-2157 issued by the Naval Facilities Engineering Command, Norfolk, Virginia for dredging services. Norfolk, which is a large business, contends the procurement was improperly set aside for participation only by small business concerns when there was no reasonable basis to believe that adequate competition could be obtained from such concerns.

On September 15, 1982, Norfolk asked the United States District Court for the Eastern District of Virginia, Norfolk Division (Civil Action 82-652-N) for a Temporary Restraining Order (TRO) preventing the Navy from entering into any contract prior to a hearing by the court. Norfolk also requested that the court declare the agency's issuance of the solicitation null and void and, in the alternative, asked the court to request our Office to decide Norfolk's protest pending before our Office. On September 16, the court denied the TRO. We have been informed by the court that it intends to decide the case on its merits and that while it would consider an opinion from our Office, it was not asking for an opinion and would not delay the matter before it pending receipt of a decision from our Office.

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It is our policy not to consider protests where the material issues are pending before a court of competent jurisdiction unless the court requests, expects or otherwise expresses an interest in receiving our views. Weeks-Miller Joint Venture, B-203107, July 31, 1981, 81-2 CPD 76. While the court has stated it would consider our views, it intends to proceed with Norfolk's request for relief whether or not we issue an opinion. Under these circumstances, we do not think the court can be said to be expecting or otherwise expressing an interest in our views. Therefore, we will not consider the matter and dismiss the protest. See Alfred Calcagni & Sons, Inc., B-205029, February 22, 1982, 82-1 CPD 154.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel